ANCILLARY RECEIVERSHIPS IN BANKRUPTCY.

ALTHOUGH there was no express provision in the Bankruptcy Act of 1867 authorizing the appointment of receivers for the care and custody of bankrupt estates until the selection of trustees, it was almost universally held that, within the general equity powers of a court of bankruptcy, the judge had the power to appoint such a receiver where the circumstances rendered it desirable.[1] The present Bankruptcy Act, however, expressly invests the court of bankruptcy with power to "appoint receivers or marshals, upon application of parties in interest, in case the court shall find it absolutely necessary, for the preservation of assets, to take charge of the property of bankrupts after the filing of the petition, and until it is dismissed, or the trustee is qualified."[2] In addition, it has sometimes been considered that the court might extend the powers of a receiver when appointed, under the further provisions of the Act granting it full power to "make such orders, issue such processes, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act."[3]

Where assets of the bankrupt are located in two or more federal judicial districts, an interesting question arises as to the status, rights, and duties of a receiver in bankruptcy appointed by the district court of original jurisdiction. He finds himself in one of three positions in regard to assets in a foreign judicial district:

First, the order and appointment may carry with it the right and duty to take the assets wherever found, irrespective of the federal court divisions.

Second, the original appointment may confer on the receiver the right to apply for recognition to any district court within whose jurisdiction assets are located, and *the right* to have such court confirm or extend the original order and appointment.

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[1] Lansing *v.* Manton, Fed. Cas. 8077; Sedgwick *v.* Place, Fed. Cas. 12619; Keenan *v.* Shannon, Fed. Cas. 7640.

[2] Bankruptcy Law of 1898 § 2 (3).

[3] *Ibid* § 2 (15).

Third, the original appointment may give the receiver merely the privilege of applying to such district court for recognition, and it may be within the discretion of the judge to entertain such application, or to make such other ancillary appointment, as he sees fit.

A bankruptcy receivership is merely temporary, often a matter of days, but generally of vital importance to the welfare of the estate. Usually the exigencies of the case demand immediate determination. The conservation of large and scattered commercial interests pending a consideration of the situation by creditors requires immediate action and not speculation on legal theories. The easy, safe, and quick way is to ask the assistance of the courts wherever there is any possibility of doubt. Out of abundance of precaution, the practice has been for a bankruptcy receiver to apply to the judge of each district court within whose jurisdiction property of the bankrupt estate is located to confirm or to extend his original appointment, or to appoint him ancillary receiver for such district. No nice distinctions are made in the application. It is immaterial to the receiver whether his authority is derived from his original appointment, or whether he acts by virtue of the decrees of an ancillary jurisdiction. His object is to have some decree of a court back of him sufficient to protect him in seizing, holding, and conserving the property which he finds in the bankrupt's possession. The more orders and decrees he has, the safer he feels.

Almost without serious consideration the courts have fallen into the practice of granting these applications, *ex parte*, or by general consent, until they find themselves committed to it without having expressed any opinion on the subject whatsoever. There are but seven reported cases from six different jurisdictions which touch the question. One is almost tempted to say that they represent as many different points of view. Arranged in chronological order, they are as follows:

IN RE SCHROM.[1] This was an application by a receiver in involuntary bankruptcy proceedings in Iowa for authority from his own court to bring a suit in Illinois to obtain possession and control of property there. The court refused the application because "the adjudication in bankruptcy has not yet been had, and this court has not yet been clothed with the full jurisdiction over the prop-

[1] November, 1899, Northern District of Iowa, 97 Fed. Rep. 760, 3 Am. B. Rep. 352.

erty of the alleged bankrupt that will accrue after the adjudication has taken place. . . . The proper course to pursue is for the petitioning creditors to take proceedings in the proper court, state or federal, in Illinois, in their own name, setting up the proceedings now pending in bankruptcy in this court as the basis of their action, and asking that court to protect the rights of creditors in the property in Illinois, either by the appointment of a receiver, by injunction, or any other appropriate remedy."

IN RE PEISER.[1] A receiver appointed in New York claimed funds in a Trust Company in Pennsylvania. The Trust Company refused to pay in obedience to an order of the New York Court, which thereupon fined its officers for contempt. The court, referring to the fact that neither of these officers was within its jurisdiction, directed the receiver to apply to the district court for the Eastern District of Pennsylvania "for its assistance in enforcing the order of contempt." On such a petition by the receiver, the Pennsylvania court, without any written opinion, ordered the Trust Company to turn over to him the money on deposit.

IN RE WILLIAMS.[2] This was a petition by certain creditors alleging that they had instituted involuntary bankruptcy proceedings in Colorado and asking the Arkansas court, as auxiliary to the district court of Colorado, to grant an injunction restraining parties having possession of the bankrupt's property from disposing of it. The application was denied on the ground that the Bankruptcy Act "makes no provision for ancillary or auxiliary proceedings in district courts other than that in which the proceedings are pending."

IN RE WILLIAMS.[3] In considering an application by a trustee for the examination of witnesses in bankruptcy proceedings pending in another jurisdiction, the court discussed generally the question of ancillary or auxiliary jurisdiction. It concluded that,

"It is not necessary to go into the technicalities of any of these examples of ancillary or auxiliary jurisdiction, because the existing bankruptcy statute is absolutely destitute of any hint of such a jurisdiction in aid of proceedings in bankruptcy pending in another district or court of bankruptcy. Possibly, Congress might have adopted such a scheme of bankruptcy, and

[1] April, 1902, Eastern District of Pennsylvania, 115 Fed. Rep. 199, 7 Am. B. Rep. 690

[2] February, 1903, Eastern District of Arkansas, 120 Fed. Rep. 38, 9 Am. B. Rep. 741.

[3] May, 1903, Western District of Tennessee, 123 Fed. Rep. 321, 10 Am. B. Rep. 538.

might have made every district court in the United States a kind of administrator *ad colligendum* of the assets within that district in aid of the original court of bankruptcy charged with the administration of the bankrupt's property; but Congress has done no such thing, and therefore the district courts in the several States have no such ancillary or auxiliary jurisdiction as has been invoked by these applications."

ROSS-MEEHAN FOUNDRY CO. *v.* SOUTHERN CAR & FOUNDRY CO.[1] In this case a petition for an ancillary receiver was denied for formal defects in the application. The court concludes that upon a proper petition and notice to all parties in interest such an ancillary receiver might be appointed.

"It requires a formal bill in equity against the proper parties, in a court of competent equity jurisdiction, to obtain that auxiliary relief which the petitioning creditors need and seek by this proceeding. A district court of the United States may be one of such courts of equitable jurisdiction, if the bankruptcy statute so provides; but it does not possess the power *qua* a court of bankruptcy to entertain such a bill."

MATTER OF SUTTER BROS.[2] This was a motion by a bankrupt to vacate an order for examination under Section 21 a. In denying the motion, the court took occasion to say "the order of this court making the Chicago receivers, receivers here, makes this a case pending in *this* court."

IN RE TYBO MINING & REDUCTION CO.[3] In this case an application in Nevada for the appointment and recognition of a trustee in bankruptcy appointed in the District of Maine was denied on the ground that the Bankruptcy Act confers no ancillary jurisdiction on a district court to aid in the administration of the estate of a person adjudicated in another district.

In the midst of such confusion in the decisions of our district courts, we naturally turn to the chancery practice of the United States circuit courts. Unfortunately equal confusion exists there. Owing to the jealousy with which each court guards its supremacy within its own jurisdiction, our courts have never dared follow the English practice of appointing receivers for property without regard to its location.[4] The circuit courts have most often considered the question of ancillary receivers in connection

[1] July, 1903, Western District of Tennessee, 124 Fed. Rep. 403, 10 Am. B. Rep. 624.

[2] April, 1904, Southern District of New York, 131 Fed. Rep. 654, 11 Am. B. Rep. 632.

[3] September, 1904 (Nevada), 132 Fed. Rep. 697, 13 Am. B. Rep. 62.

[4] Thus a court of Chancery in London appoints a receiver for property in British India (Logan *v.* Princess of Coorg, Seton 810; Keys *v.* Keys, 1 Beav. 425), Canada

with the foreclosure of interstate railways where the property was partly in one district and partly in another, all forming a single line. It is, of course, apparent that such property must be administered by a single head, and that it would be fatal to have the railway handed over to as many independent receivers as there are districts through which it might run. Common sense and necessity early established the practice of appointing a receiver in the district where the railway was principally located, and, on grounds of comity by the courts of other districts, of appointing or confirming the original receiver in his office in each subsidiary district.[1] Until 1889, when Justice Harlan had occasion to consider this subject, it might almost be said that this was a settled practice.[2] His views, however, were opposed to it. A suit had been brought in the United States Circuit Court for Ohio, for the foreclosure of a mortgage on a railroad which extended through Ohio and West Virginia. After the appointment of a receiver in the Ohio proceedings a bill termed an "ancillary bill" was filed in the United States Circuit Court for West Virginia, praying the court to take "ancillary jurisdiction." It was admitted that nothing was desired or expected from the West Virginia court, except an order appointing or confirming the appointment of the original receiver, and such other orders as might be necessary to vest in him possession and control of such of the property as was in the West Virginia district. The application was refused on the grounds that the intervention of the West Virginia court could occur only in a separate and independent suit.[3] The Circuit Court for the District of Massachusetts, however, refused to follow the decision of Justice Harlan, stating that in other districts bills whose only purpose is the appointment of an ancillary receiver "have been frequently entertained and acted upon." They decided to follow

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(Tyler *v.* Tyler, Seton 811), China (Houlditch *v.* Donegal, 3 Bli. N. S. 301, 343), West Indies (Seton 813), Italy (Hinton *v.* Ealli, 24 L. J. Ch. 121), New South Wales (Underwood *v.* Frost, Seton 812).

[1] Central Trust Co. *v.* Texas, etc., Ry., 22 Fed. Rep. 135; Jennings *v.* Philadelphia, etc., Co., 23 Fed. Rep. 569; Central Trust Co. *v.* Wabash, etc., Co., 29 Fed. Rep. 161, 618; Colpane *v.* Templeton, 106 Fed. Rep. 375; Phinizy *v.* Augusta, etc., Co., 56 Fed. Rep. 273; Clyde *v.* Richmond, etc., Co., 56 Fed. Rep. 539; New York, etc., Co. *v.* New York, etc., Co., 58 Fed. Rep. 268; Continental Trust Co. *v.* Toledo, etc., Co., 59 Fed. Rep. 518; Dillon *v.* Oregon, etc., Co., 66 Fed. Rep. 622; Chattanooga, etc., Co. *v.* Felton, 69 Fed. Rep. 273.

[2] Mercantile Trust Co. *v.* Kanawha R. Co., 39 Fed. Rep. 337.

[3] *Accord, In re* Brant, 96 Fed. Rep. 257; Compton *v.* Jessup, 68 Fed. Rep. 263; see also Green *v.* Star Cash and Package Car Co., 99 Fed. Rep. 656.

that practice and appoint such an ancillary receiver for the Philadelphia & Reading Railway Company "without prejudice to a full consideration of the question if hereafter a motion is made to dissolve or annul the order." [1]

The interests at stake were so large and the need not only for immediate but assured relief generally so urgent, that the attorneys having railway foreclosures in hand could not risk having their plans miscarry in any single jurisdiction. Accordingly they devised the scheme of filing original and independent bills for foreclosure in the federal courts of each district through which the railway extended, procuring the appointment of the same receiver for each district on grounds of comity, and having duplicate decrees entered on all petitions in each district thereafter.[2] Thenceforth the question of ancillary receivers in the federal courts became merely academic. If a court refused the appointment, the applicant had only to change the form of the petition, label it an original bill, and accomplish the desired result.[3]

Conceivably this same practice is possible in the district courts by filing independent involuntary petitions in the different jurisdictions. But the Bankruptcy Act is framed, and the general orders of the Supreme Court provide for proceedings in but a single jurisdiction.[4] Certainly no district judge would consent to act on an appointment for a receiver where the facts were disclosed that proceedings were already pending in another jurisdiction, and the sole object of the second petition was to procure the appointment of a receiver.

It has long been definitely settled in the federal courts that a receiver has no status beyond the territorial jurisdiction of the court which appointed him,[5] unless he is invested with some statutory or other express authority to represent the parties to the litigation everywhere.[6] It is, of course, immediately apparent from the Bankruptcy Act itself[7] that the various district courts are vested only with authority "to exercise original jurisdiction in bank-

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[1] Platt *v.* Philadelphia, etc., Co., 54 Fed. Rep. 569.

[2] Compton *v.* Jessup, 68 Fed. Rep. 263; High, Receivers § 375 a.

[3] New York, etc., Co. *v.* New York, etc., Co., 58 Fed. Rep. 268.

[4] Bankruptcy Law of 1898 § 2 (1); General Orders in Bank. VI., 172 U. S. 653.

[5] Booth *v.* Clark, 17 How. (U. S.) 322; Hale *v.* Allinson, 188 U. S. 56; Hale *v.* Hardon, 89 Fed. Rep. 283; Hayward *v.* Leeson, 176 Mass. at p. 325.

[6] Relfe *v.* Rundle, 103 U. S. 222; Howarth *v.* Lombard, 175 Mass. 570; Burr *v.* Smith, 113 Fed. Rep. 858.

[7] Bankruptcy Law of 1898 § 2.

ruptcy proceedings . . . within their respective territorial limits as now established." Unless, therefore, some statutory authority can be found, a bankruptcy receiver appointed by a court of such limited jurisdiction has a standing only within its shadow.

By the express provisions of section 70 a trustee in bankruptcy is invested "with the title of the bankrupt, as of the date he was adjudged a bankrupt." He is the true successor in title to the bankrupt. After his appointment and qualification, a bankruptcy trustee may go anywhere, without regard to district lines, to assert his title, and to protect or administer the estate. However, until he is appointed, even after adjudication, the title to the whole estate remains in the bankrupt.[1] There is nothing in the act providing for a change until the trustee is selected. The receiver is regarded as the mere temporary custodian chosen to take and retain possession of the visible property liable to waste and to deliver it to the trustee.[2] He is not invested with title, either by express statute or by general equity principles.[3]

It follows, therefore, that where the exigencies of the case require the receiver to travel beyond the jurisdiction of the appointing court, he comes into each foreign jurisdiction neither with authority to take the assets located therein, nor with power to ask the court to recognize, confirm, or extend his original appointment as of right.[4] At most his is merely the privilege of asking recognition on grounds of comity. It is within the discretion of the court to refuse such recognition, to append conditions, to insist on the appointment of a co-ancillary receiver, or to appoint a different person altogether.[5] "When such application is made, the court to which it is addressed exercises its own original jurisdiction . . . to decide what remedy it should extend in the particular case, and whether the proper administration of the assets requires the appointment of a receiver."[6] If he is appointed, he becomes an officer of the subsidiary court, and completely amenable to its control. His power and rights to the assets within its jurisdiction are derived from its decrees, and do not depend

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[1] Fuller *v.* N. Y. Fire Ins. Co., 184 Mass. 12.

[2] Boonville Nat. Bank *v.* Blakley, 107 Fed. Rep. 891, 6 Am. B. Rep. 13.

[3] Beach on Receivers § 2; Hale *v.* Hardon, 89 Fed. Rep. 283; Hilliker *v.* Hale, 117 Fed. Rep. 220.

[4] Atkins *v.* Wabash, etc., Co., 29 Fed. Rep. 161.

[5] Sullivan *v.* Sheehan, 89 Fed. Rep. 247; Shinney *v.* North American, etc., Co., 97 Fed. Rep. at p. 12; Kirker *v.* Owings, 98 Fed. Rep. 499.

[6] Sands *v.* E. S. Greeley Co., 88 Fed. Rep. 130.

upon the decrees of the court of original jurisdiction extended or recognized on grounds of comity. There exist two distinct legal persons. The ancillary receiver owes obedience within the new jurisdiction only to the court that appoints him, and is to follow its directions irrespective of the orders of the court of original jurisdiction issued to him in his capacity of original receiver.[1]

Lee Max Friedman.

BOSTON.

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[1] Union Trust Co. *v.* Atchison, etc., Co., 87 Fed. Rep. 530; Reynolds *v.* Stockton, 140 U. S. 254; Phinizy *v.* Augusta, etc., Co., 56 Fed. Rep. 273; Chattanooga, etc., Co. *v.* Felton, 69 Fed. Rep. 273.